

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
Plaintiff,

vs

Criminal Action
No. 13-270

ATIBA WARREN,
Defendant.

Transcript of proceedings held on Friday, July 10,
2015, United States District Court, Pittsburgh, Pennsylvania,
before the Honorable Mark R. Hornak, U.S. District Court Judge.

APPEARANCES:

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produced by computer-aided transcription.

P R O C E E D I N G S

(Held telephonically in the conference room.)

THE COURT: Good morning, everyone. This is Mark Hornak and present with me in the conference room is my courtroom deputy, Brian Babik, my law clerk, Doug Baker, and our court reporter today is Miss Shirley Hall.

Ms. Hall, we're here on a criminal docket matter, 13-CR-270, the United States of America, represented by Miss Katherine King, versus Mr. Atiba Warren, represented by Mr. Mark Sindler.

We've had a hearing on various pretrial motions that were filed on behalf of the Defendant. We had briefing and all that went with it, and the Court has now issued its orders and opinions on those pretrial motions. So I set the conference this morning, because the speedy trial clock is now re-ticking, to set a date for trial. So that's my agenda. That's not meant by way of any limitation on anything Mr. Sindler would like to bring up today or that Miss King would like to bring up today.

I do note that the Defendant is not present or by telephone, and the Court will make sure the best it can that I comply with the appropriate criminal rules regarding matters that can be discussed outside the presence of the Defendant. But the Court's intention was to just get some dates up onto the calendar.

9:27:11AM 1

So, Mr. Sindler?

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MR. SINDLER: Thanks, Judge.

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Mr. Warren wants to go to trial, so we'll need to set a date. There is a matter that I'm going to require -- I'm going to ask for a bit of guidance here from you; not asking you to give me legal advice, obviously, but it's a CJA-related matter, does not concern the representation of Mr. Warren in terms of irreconcilable differences or anything like that. We're getting along. But there are matters concerning my appointment that are best heard directly by you. And, of course, if you disagree eventually or -- we can bring the Government in on what was talked about, but I'm going to need a date probably sometime no sooner, due to both scheduling issues on my calendar and this other CJA-related matter, until sometime the middle of September.

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Mr. Warren and I had a very brief conversation in the last 48 hours where he understands that. I think his concern was he would like to be resolving this case within the next year, which I think is very -- we'll do it probably this year, meaning 2015, but I'm unable for a couple of different reasons to be able to do it this month or next month.

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THE COURT: Okay. This month being July, next month being August.

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MR. SINDLER: That's right.

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THE COURT: Okay. And we'll hear from Miss King in a

9:28:32AM 1 moment. But just in terms of scheduling, I'm looking at
2 September for both purposes of counsel and, to your knowledge,
3 any likely witnesses you have, should the Court take into
4 account the religious holidays which start on -- at sundown on
5 Sunday, September 13th, and appear to run through sundown on
6 Tuesday, September 15th?

7 MR. SINDLER: For me you should.

8 THE COURT: Okay.

9 MS. KING: And, Your Honor, I am actually scheduled
10 for a vacation on the 14th myself for a wedding, so I will
11 not be available on the 14th.

12 THE COURT: The 14th of?

13 MS. KING: September.

14 THE COURT: Okay, got it. Got it. Okay.

15 Let's take a little look here --

16 MS. KING: Your Honor, I also did check with all of
17 my potential witnesses --

18 THE COURT: Oh, good.

19 MS. KING: -- and I only checked with them through
20 the end of September, so I'm glad to hear that Mr. Sindler is
21 also not available, because we had about one week where there
22 were not vacations scheduled. Kevin Kaufman, who would testify
23 as to the interstate nexus if that's to be required, is
24 unavailable the week of September 14th through 18th for
25 previously scheduled training in Glynco, Georgia. I don't know

9:29:50AM 1 and I haven't had the opportunity to talk to Mr. Sindler as to
2 whether he would stipulate to the interstate nexus. If so,
3 Mr. Kaufman's testimony would not be required.

4 THE COURT: Okay. Let me ask you this, Miss King.
5 Putting aside the time we'll spend in the mechanics of
6 selecting a jury, how long do you think it will take the
7 United States to put its case-in-chief in?

8 MS. KING: Our case-in-chief will go in in one day.
9 However, if Mr. Sindler is requesting to re-introduce
10 Mr. Johnson's model and expert testimony, I also am going to
11 request a Daubert hearing, so that should also be something
12 that will probably have to happen before the trial.

13 THE COURT: Okay. But putting that aside for the
14 moment --

15 MS. KING: The case-in-chief we'll have three or four
16 witnesses, and I anticipate it will all go in in one day,
17 Your Honor, after the jury is selected.

18 THE COURT: Got it. Thank you, Miss King.

19 Mr. Sindler, what do you think in terms of -- based
20 on what you know now -- and I know it could be a little
21 unpredictable -- based on what you know now, how long do you
22 think the defense case will be?

23 MR. SINDLER: To the extent that there might be one,
24 it would probably just be another day.

25 THE COURT: Okay. Do you anticipate, based on what

9:31:02AM 1 you know now, that Mr. Johnson would be taking the stand at
2 trial?

3 MR. SINDLER: Yes.

4 THE COURT: Okay. So let's see what we've got here.
5 I'm going to put you on mute so I can speak with Mr. Babik.

6 (Off the record discussion.)

7 THE COURT: Counsel, let me ask you this -- and we
8 can work backwards from this. But I could -- I know for sure
9 without bumping any other trial -- and I'm willing to do that
10 if I have to -- without my bumping any other trials, we could
11 go to trial the week of Monday, October 26th. Now, I'll work
12 from that back to now if we need to.

13 MS. KING: As far as the Government knows,
14 Your Honor, that works. However, I have not checked with my
15 witnesses. I will do so today.

16 THE COURT: Mr. Sindler, what do you think, sir?

17 MR. SINDLER: I'll be around. I'm fine by that.

18 THE COURT: Okay. So if I enter an order that stops
19 the speedy trial clock because of the necessity of preparation
20 and other related matters until that date, the Defendant would
21 be agreeable to the entry of an order that does that?

22 MR. SINDLER: That's a fair question. Obviously he's
23 not with me right now --

24 THE COURT: Right.

25 MR. SINDLER: -- but I do hope to see him no later

9:33:47AM 1 than Monday is how we left it. I won't be able to see him this
2 weekend, so I need to run it by him, but I don't anticipate a
3 problem.

4 THE COURT: Okay.

5 MR. SINDLER: So -- I'm sort of in a difficult
6 position here, Judge. I know --

7 THE COURT: You're doing the best you can.

8 Why don't we do this. Miss King needs to talk to her
9 witnesses anyway so, Miss King, you can do that.

10 Mr. Sindler, you let Mr. Babik know on Monday if
11 there's any objection from the defense to the trial starting on
12 Monday, the 26th.

13 And, Miss King, you let Mr. Babik know if there are
14 any problems from the United States's side starting trial on
15 Monday the 26th. If we get two "no problems," we'll just
16 enter an order. And then I'll bake into that order, Miss King,
17 if -- time for any motions related -- motions in limine which
18 would include any Daubert motions, and we'd make sure there's
19 time for those to be taken up and addressed on either side, if
20 any are raised.

21 MS. KING: Thank you, Your Honor.

22 THE COURT: Mr. Sindler, if we do it that way, can
23 you live with that, sir?

24 MR. SINDLER: Sounds good.

25 THE COURT: Okay. Mr. Sindler, anything else we

9:34:53AM 1 should take up today?

2 MR. SINDLER: There is. I can file a motion, Judge.
3 I would just like to make sure I'm conforming with protocols of
4 the District Judge I'm in front of, but do I need to schedule
5 an ex parte hearing or an ex parte conference that involves you
6 concerning matters involving my appointment as Mr. Warren's
7 lawyer? Would you like me to file a motion or can this be
8 scheduled --

9 THE COURT: Just schedule it directly with Mr. Babik.
10 And, in fact, if you give Mr. Babik about three minutes after
11 we hang up from this call or -- are you going to be at your
12 office, Mr. Sindler?

13 MR. SINDLER: Yes.

14 THE COURT: Mr. Babik, if you would call Mr. Sindler
15 as soon as we're done with the call here and we can get that
16 arranged.

17 MR. BABIK, DEPUTY CLERK: Will do, Judge.

18 THE COURT: Does that work for you, Mr. Sindler?

19 MR. SINDLER: Thank you.

20 THE COURT: Anything else on your list, sir?

21 MR. SINDLER: No.

22 THE COURT: Miss King, anything else you believe we
23 should take up today?

24 MS. KING: No, Your Honor.

25 THE COURT: I will say if it turns out at the end of

9:35:46AM 1 the day Monday there's a problem, we'll probably be getting you
2 folks on the phone Tuesday morning to iron it out. Otherwise
3 we'll just get a scheduling order out then.

4 MS. KING: Thank you.

5 MR. SINDLER: One thing, Judge. I'm going to be in
6 front of Judge Bigley on Tuesday morning. I should be free by
7 the lunch hour but should be tied up during the morning.

8 THE COURT: We'll track you down. If you're free --
9 if we need to even do that, Mr. Sindler. If not, if we get the
10 high sign from both Miss King and you when we hear from you on
11 Monday, then that will be academic and we would just get an
12 order out.

13 MR. SINDLER: Very well. Thank you.

14 THE COURT: Thank you.

15 (Concluded at 10:30 a.m.)

16 C E R T I F I C A T E

17 I, Shirley Ann Hall, certify that the foregoing is a correct
18 transcript for the record of proceedings in the above-titled
19 matter.

20
21
22 s/Shirley Ann Hall
23 Shirley Ann Hall, RDR, CRR
24 Official Court Reporter
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